

REMARKS/ARGUMENTS

The non-final Office Action of July 27, 2007 has been carefully reviewed and this paper is Applicants' response thereto. Claims 1 – 39 are pending in the application. Claims 1-3, 5-8, 11 and 13 were amended. Claims 38-39 are new. Claims 1-19 and 21-37 were rejected under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) in view of U.S. Pub. No. 2002/0013612 to Whitehurst (Whitehurst). Claims 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitehurst in view of U.S. Pub. No. 2002/0013613 to Haller *et al.* (Haller). In response, Applicants respectfully traverse the rejections in view of the above amendments and the remarks that follow.

New Claims

Claims 38-39 are new. Claim 38 depends from claim 1 and is directed toward an embodiment that includes open and closed-loop treatment therapy and support is found on pg. 60, ¶ 183, thus no new matter is added. Claim 39 is directed to a method for treatment of a nervous system disorder. Support for claim 39 is found in the specification as filed, paragraphs 183-185, thus no new matter was added.

Amendments to the Claims

Claim 1 and 11 were amended to clarify the intended scope of the claim and now recite the feature of “wherein, in operation, the second treatment therapy mode is responsive to the data being transported over the communications channel.” To the extent this was not inherent in the claim as originally drafted, support is at least found in the specification as filed, pg. 60, ¶ 183, thus no new matter was added.

Claims 2-3 and 4-8 were amended to clarify the scope of the claims and no new matter was added.

Claim 13 was amended to clarify the data is being provided from the implantable component to the external component. Support for this feature is at least found in the specification as filed, pg. 60, ¶ 183, thus no new matter was added.

Rejection under 35 U.S.C. §102 and § 103 - Whitehurst

Claims 1-19 and 21-37 were rejected under 35 U.S.C. § 102(e)/103(a) in view of Whitehurst. Claim 20 was rejected under 35 U.S.C. § 103 as being unpatentable over Whitehurst in view of Haller. Thus, all pending claims were rejected based on Whitehurst, alone or in combination with Haller. Claims 1, 11, 13 and 37 are independent.

As an initial matter, no rationale was provided for why claim 5 is believed to be unpatentable in view of Whitehurst. Furthermore, after reviewing the prior office actions, Applicants have been unable to locate any rationale for why Whitehurst is believed to render claim 5 unpatentable. Accordingly, a notification that claim 5 contains allowable subject matter is respectfully requested. Alternatively, an indication of the rationale being used to support the rejection of claim 5 is respectfully requested.

Claim 1 recites the feature of “a first external component configured to receive data from the implantable component and to support a second treatment therapy mode in accordance with the data.” As recited in claim 1, therefore, the data used to support the second treatment therapy is based on data received from the implantable component. Claim 1 further recites the feature of “wherein the implantable component is configured ... to automatically switch to the second treatment therapy mode when the external component is coupled to the communications channel.” The Office Action has failed to support its suggestion that Whitehurst discloses these features. The Office Action suggests that a patient programmer or clinician programmer can be used to modify the treatment mode, thus creating a closed-loop operation. Even if such a statement was correct, it still fails to support a suggestion that Whitehurst discloses the above recited features of claim 1 because such use of Whitehurst at most discloses a manual switching of modes. Thus, Whitehurst still fails to disclose the feature “automatically switch to the second treatment therapy mode when the external component is coupled to the communications channel” recited in claim 1.

The Office Action also pointed to paragraph 92 of Whitehurst, which is provided below:

[0092] Function 1: If necessary, transmit electrical power from the external electronic appliance **230** via appliance **220** to SCU **130** in order to power the device and/or recharge the power source/storage device **180**. External electronic appliance **230** may include an automatic algorithm that adjusts electrical and/or drug stimulation parameters automatically whenever the SCU(s) **130** is/are recharged.

Whitehurst, pg. 8, ¶ 92. This, portion of Whitehurst fails to disclose “a first external component configured to receive data from the implantable component and to support a second treatment therapy mode in accordance with the data” but instead merely discloses an external component configured to modify a treatment mode during charging, without more. In other words, to the extent the above portion discloses a second treatment therapy mode, the second treatment therapy mode is not in accordance with the data but instead is irrespective of the data. Therefore, this paragraph of Whitehurst cannot fairly be said to disclose the automatic switching between modes as recited in claim 1.

The Office Action also suggested that paragraph 90 discloses a mode of switching. However, paragraph 90 discusses the use of separate or specialized implantable device and at most discloses the possibility of transmitting information to an external device or to implanted SCUs. Notably, there is no suggestion that Whitehurst contemplated, suggested or disclosed the feature “wherein the implantable component is configured ... to automatically switch to the second treatment therapy mode when the external component is coupled to the communications channel.” Instead, this section of Whitehurst at most discloses that information may be transmitted from one implanted device to an external device or to a separate implanted device.

Regarding the suggestion that it would be obvious to include a switching mode, Applicants respectfully submit the Office Action fails to provide any rationale for why the system of Whitehurst should be so modified or what the basis for such a modification would be. In particular, there is no disclosure for how the reprogramming done by a user that the Office Action appears to be reading as a closed-loop mode could be done automatically. Instead, it appears that Whitehurst merely discloses the ability to couple an external component to an implanted device and modify setting of the implanted device but fails to disclose the above

recited features of claim 1. Therefore, for at least the above reasons Whitehurst fails to disclose, suggest or teach all the features of claim 1. Accordingly, claim 1 is patentable over Whitehurst.

Claims 2-12 and 38 depend from claim 1 and are patentable for at least the reasons that claim 1 is patentable and for the additional feature recited therein. For example, claim 38 recites the feature of “wherein the data includes signal measurements and the first mode is open-loop treatment therapy and the second mode is closed-loop treatment therapy, wherein, in operation, the closed loop treatment therapy provided is directly responsive to the signal measurements” and the Office has not pointed to any portion of Whitehurst as disclosing this feature. Indeed, the Office Action admits that closed-loop treatment requires the use of feedback and Whitehurst fails to disclose such a feature but instead at most discloses a manual switching, as noted above.

Claims 11, 13 and 37 recite features similar to the above feature of claim 1, thus Whitehurst also fails to disclose at least one feature of each of the dependent claims. Accordingly, Whitehurst cannot be said to anticipate claims 1, 11, 13 and 37. For example, claim 37 recites the feature “exchanging neurological data between the implantable component and an external component” and further recites the feature of “if the external component and the implantable component are coupled, automatically switching to a closed-loop mode with the external component in accordance with the neurological data.” Applicants have been unable to find any mention of such steps being performed by Whitehurst in order to provide treatment of a nervous system disorder.

Claims 2-10 and 38 depend from claim 1. Claim 12 depends from claim 11. Claims 14-19 and 21-36 depend from claim 13. Therefore, claims 2-10, 12, 14-19 and 21-36 are not anticipated for at least the reason that claims 1, 11, and 13 are not anticipated and for the additional features recited therein.

Claim 20 depends is based on independent claim 13, which as noted above, includes at least one feature not disclosed by Whitehurst. Applicants note that the Office Action has not suggested that Haller could correct the above noted deficiency in Haller, nor does such a suggestion appear supportable. Therefore, the combination of Whitehurst and Haller fail to disclose all the features of claim 20. Thus, the combination of Whitehurst and Haller fail to support a *prima facie* case of obviousness with respect to claim 20.

Accordingly, withdrawal of these grounds of rejection is also respectfully requested.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

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